

**Complaint 2006-No. 1
In Re Eickmeyer**

REASONABLE CAUSE DETERMINATION AND ORDER OF DISMISSAL

I. Nature of the Complaint -- Undue influence -- Jurisdiction

Mr. Bruce M. Landram, Complainant, alleges that 35th District Representative Bill Eickmeyer, Respondent, violated RCW 42.52.070 and/or RCW 42.52.160 of the Ethics in Public Service Act (Act) by threatening members of the North Mason School Board (NMSB) at a NMSB public meeting on April 28, 2005. The alleged threats were made in the context of a proposal being considered by the NMSB to dismiss members of a local board under the jurisdiction of the NMSB, an action opposed by the Respondent and others. The local board, hereinafter referred to as the Theler Board, administers certain trust responsibilities related to real property left to the school district by will.

RCW 42.52.070 -- Special Privileges

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

RCW 42.52.160 -- Use of persons, or property for private gain

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official custody, for the private benefit or gain of the officer, employee or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties. . . .

Through a variety of somewhat disjointed claims the Complainant has, minimally, invoked the jurisdiction of the Board with regard to the implications of the alleged threats and their connection to these two statutes

II. Other allegations -- lack of jurisdiction

The Complainant alleges a number of other circumstances or events which he believes constitute ethical violations by the Respondent and has provided a number of documents and an account of several contentious issues involving the trust lands and the relationship of several entities generally involved in Hood Canal salmon restoration efforts. In general, these allegations are (1) the Theler Board, which he views as more or less abandoning its responsibilities under the trust, was "stacked" with pro-Eickmeyer supporters, both personal and political and (2) some of the Respondent's supporters on the Theler Board also held positions with other entities supported by Respondent in his legislative capacity and these other entities were engaged in salmon restoration issues. Complainant concludes these

"interlocking directorships" result in conflicts of interest. The trustee for the Theler trust had raised this concern in his report to the NMSB.

RCW 42.52.320 -- Authority of legislation ethics board -- states in pertinent part:

(1) The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

No provision of the Act prohibits Respondent from having his supporters participating in local or state boards or commissions nor does any provision of the Act address issues related to claims on conflicts of interest on the part of these non-legislators. These allegations are dismissed for lack of both personal and subject matter jurisdiction.

III. Results of Investigation -- Determination of Facts

The investigation into this Complaint is limited to the statements by the Respondent to the NMSB on April 28, 2005. The Board finds there is reasonable cause to believe the following:

1. On the evening in question the NMSB held a public meeting and one of the agenda items involved the performance of the Theler Board. The Theler Board is subject to the oversight of the NMSB and is charged with certain responsibilities relative to the management of real property bequeathed to the North Mason School District. The management of this property and its future development has been the subject of much discord among those living in the area. Following public testimony the NMSB voted to remove all but one member of the Theler Board. The Respondent addressed the NMSB during the public testimony portion of the meeting and his remarks are attached to this Order.
2. Some of those in attendance, including the Complainant, interpreted the Respondent's remarks as a threat directed to the NMSB. Others in attendance refute this interpretation. In the view of the Complainant the nature of the threat was that the Respondent threatened the loss of funds and legislative support for salmon enhancement and salmon education efforts in the area if the Theler Board was dismissed. The Complaint also attempts to place responsibility on the Respondent for certain "attack letters to the editor" sent to the local newspaper subsequent to the Theler Board dismissal. The Complainant views these letters as "pay back" for the action taken by the NMSB and part of an effort to defeat an upcoming school levy election. The Complainant apparently makes the connection to Respondent because the authors of these letters to the editor were personal and political supporters of the Respondent and included at least one individual dismissed from the Theler Board. One of the letter writers had served as the Respondent's legislative campaign manager.
3. Respondent's conspiracy theory is wholly unsupported by any facts or reasonable

inferences to be derived there from. Rather, Respondent will testify he played no role in the levy election and the authors of the letters to the editor will testify they acted independently. The facts suggest that this aspect of the pleadings is hopelessly clouded by the local turmoil over the many issues surrounding the Theler trust lands.

4. The Respondent will further testify that the intent of his remarks to the NMSB was to express his feelings for the school district and the community as well as his concerns about the potential this local controversy had for interfering with the cooperative spirit behind Hood Canal salmon restoration and salmon education projects. The "old" Theler Board could be viewed as a cooperating entity in these efforts. Apparently the NMSB, which has seen several recent changes in membership, viewed the Theler Board's past cooperation or involvement with these projects as counter-productive to or inconsistent with the conditions of the Theler trust.
5. One of the more contentious issues was whether certain trust lands might be utilized by the proposed Northwest Salmon Center, a project vigorously supported by the Respondent in his legislative capacity. The Respondent states that he never selected or assigned any members to the Theler Board.
6. In addition, the Complaint alleges that the Respondent was overheard to say, after his public testimony, that "I'm going to make them pay," (for dismissing the Theler Board) and/or "this will cost them" or "they will pay for this." The Respondent and others in attendance deny he said "I'm going to make them pay" but he does admit to saying "this will cost them" and that this was in reference to the splitting of the community over the dismissal of the Theler Board and placing in jeopardy the cooperative salmon education and enhancement efforts.

IV. Determinations of Law

The Board determines there is reasonable cause to conclude as follows.

1. The statutes cited by the Complainant forbid use of legislative position to secure some privilege or exemption for self or others (RCW 42.52.070) or the use of public resources for private benefit or gain for self or others (RCW 42.52.170). Exceptions are made for assistance provided within the scope of legislative duties or as part of a legislator's official duties. These exceptions may be nullified if "improper means" are utilized by a legislator.
2. The Respondent's testimony was not a threatening communication sufficient to infer that he was employing "undue influence" to provide for special privileges or private gain for himself or another. The Respondent professed his view of the political fallout which could follow a division of the community and how important, in his view, the cooperative efforts of the community and various agencies and commissions had been in securing projects and programs he and others felt were

important. The Respondent suggested that these efforts and projects needed to remain linked ". . . to get the kind of support we need for our latest bond issues." Apparently it is this statement that prompted the Complainant to view Respondent's remarks as threatening the school district with levy opposition. This analytical leap is not reasonable and not supported by any evidence.

3. The contested statement, "I'm going to make them pay," even if true, does not in and of itself constitute a violation of either statute unless the Board were to conclude that the Respondent used his office to secure special privileges for himself or someone else, or used public resources for the private benefit or gain of himself or someone else. There are no facts to support either conclusion. The Complaint concludes that if a legislator threatens a state or local agency the legislator has used "improper means" to influence the agency, in violation of one or both of the statutes. That analysis is incorrect. That portion of the Legislative Ethics Manual relied upon by the Complainant for the proposition that threats alone constitute a violation of the Act, cites **Advisory Opinion 1995-No. 17** and that opinion, in pertinent part at page 4 states:

To assist legislators and legislative employees avoid violations of the "improper means" prohibition, we provide the following advice with regard to their official communications with state agencies on behalf of constituents or other parties: Legislators and legislative employees should avoid communications that agency officials or employees might reasonably perceive as threatening. *While such perceptions of a threat would not themselves constitute violations of the "improper means" prohibition, they certainly would create an argument that violations had occurred.* (emphasis added)

V. Conclusion and Order

Based upon a review of the Complaint and supporting documents and the Board's investigation, we conclude that the Respondent's remarks cannot reasonably be viewed as threatening. Even if we were to conclude otherwise, there are no facts or reasonable inferences there from to support Complainant's allegations that the Respondent improperly used his legislative position or public resources to secure special privileges or private benefit. Respondent's appearance before the NMSB to speak to legislative-related issues was a proper exercise of his discretionary authority within the scope of his legislative employment.

There is no reasonable cause to believe that Respondent has violated RCW 42.52.070 or RCW 42.52.160 and the Complaint is hereby dismissed.

Dated this ____ day of May, 2006.

James A. Andersen, Chair